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December 6, 2012

VIA ECF

Honorable Magistrate Judge E. Thomas Boyle  
United States District Court  
Eastern District of New York  
100 Federal Plaza  
P.O. Box 9014  
Central Islip, New York 11722

Re: Konrad v. Epley, et al.  
Docket No. 12 CV 4021

Honorable Magistrate Judge Boyle:

We are the attorneys for the defendants, Elbert Robinson, Paul Robinson and Mark Epley, in the referenced matter. We write in response to several letters, including a “letter motion” by the plaintiff seeking leave to amend her complaint, and several follow-up correspondences to the Court from the plaintiff and co-defendants concerning that motion and the scheduled pre-motion and initial conference to be held tomorrow, December 7, 2012. It appears that Judge Bianco has referred all pending motions and pre motion conferences to this Court for consideration.

In the first instance, we adopt the sentiments expressed by defendant Brown in his letter of November 29, 2012 (DE 44), particularly with respect to noted inconsistencies between the plaintiff’s initial application for leave to amend to add Mrs. Brown and her recent submission of November 26, 2012, setting forth a “draft” amended pleading that is quite different (though equally meritless) from the initial complaint.

Though it appears clear that the plaintiff’s proposed amended complaint would fail just as the initial one did for similar and additional reasons, many of which were stated by Mr. Brown, in light of the fact that we have filed a request for a pre-motion conference, plaintiff may still

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have the right under the Federal Rules to amend her complaint as of right since neither our answer nor our anticipated Rule 12 Motion have yet been filed. However, because the plaintiff has only submitted a "proposed draft", which has no legal significance, unless and until the Court rules on whether she will be permitted to amend the complaint over the objections posed by several of the defendants, my clients do not wish to proceed to a briefing schedule so as to insure that we will know which complaint we will be moving against.

It is our hope that these issues will be clarified at tomorrow's conference.

Respectfully submitted,

DEVITT SPELLMAN BARRETT, LLP

/S/

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